

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION

UNITED STATES OF AMERICA,)	Cause No. CR-03-78-BLG-RFC-03
)	
Plaintiff,)	
)	
v.)	O R D E R
)	
WESLEY WADE KINDSFATHER,)	
)	
Defendant.)	
_____)	

This Court sentenced Defendant to a term of 295 months in May of 2004. This sentence was rendered pursuant to the United States Sentencing Guidelines, which at the time were mandatory. Subsequently, the United States Supreme Court has held that the Federal Sentencing Guidelines are advisory. *United States v. Booker*, 125 S.Ct. 738, 764 (2005). August 30, 2006, the Ninth Circuit remanded Defendant's sentence for reconsideration in light of *Booker* and *Ameline*.

Pursuant to *United States v. Ameline*, 409 F.3d 1073 (9th Cir. 2005), this Court must determine "whether the sentence imposed would have been materially different had the district court known that the Guidelines were advisory." *Id.* at 1084-85.

In this instance, after reviewing the record, the Court answers the question in the negative: Defendant Kindsfather's sentence would not have been materially different had it known that the Guidelines were advisory.

Under *United States v. Mix*, 457 F.3d 906, 2006 WL 2268636 (9th Cir. 2006) (as amended), this Court is required, in fashioning a reasonable sentence, to conduct parallel analysis – first employing the Guidelines, and then considering the non-guideline sentencing factors under § 3553(a). Pursuant to this directive, the Court concludes that the Guidelines, under the facts and circumstances of this particular case, do adequately take account of the § 3553(a) sentencing factors. Therefore, the Court determines that resentencing Defendant Kindsfather is unwarranted as his sentence would not materially differ under the advisory guideline regime.

DATED this 30th day of October, 2006.

/s/ Richard F. Cebull
RICHARD F. CEBULL
U.S. DISTRICT JUDGE

cc:
Jay Lansing
AUSA James Seykora